

HOUSE \_\_\_\_\_ AMENDMENT NO. \_\_\_\_\_

Offered By

AMEND House Committee Substitute #2 for House Committee Substitute for House Bill No.  
1423, Section 302.525, Page 15, Line 51 by inserting immediately after said Line the following:  
"577.023. 1. For purposes of this section, unless the context clearly indicates otherwise:  
(1) An "aggravated offender" is a person who:  
(a) Has pleaded guilty to or has been found guilty of three or more intoxication-related  
traffic offenses; or  
(b) Has pleaded guilty to or has been found guilty of one or more intoxication-related  
traffic offense and, in addition, any of the following: involuntary manslaughter under subdivision  
(2) or (3) of subsection 1 of section 565.024, RSMo; murder in the second degree under section  
565.021, RSMo, where the underlying felony is an intoxication-related traffic offense; or assault  
in the second degree under subdivision (4) of subsection 1 of section 565.060, RSMo; or assault  
of a law enforcement officer in the second degree under subdivision (4) of subsection 1 of section  
565.082, RSMo;  
(2) A "chronic offender" is:  
(a) A person who has pleaded guilty to or has been found guilty of four or more  
intoxication-related traffic offenses; or  
(b) A person who has pleaded guilty to or has been found guilty of, on two or more  
separate occasions, any combination of the following: involuntary manslaughter under subdivision  
(2) or (3) of subsection 1 of section 565.024, RSMo; murder in the second degree under section

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1 565.021, RSMo, where the underlying felony is an intoxication-related traffic offense; assault in  
2 the second degree under subdivision (4) of subsection 1 of section 565.060, RSMo; or assault of a  
3 law enforcement officer in the second degree under subdivision (4) of subsection 1 of section  
4 565.082, RSMo; or

5 (c) A person who has pleaded guilty to or has been found guilty of two or more  
6 intoxication-related traffic offenses and, in addition, any of the following: involuntary  
7 manslaughter under subdivision (2) or (3) of subsection 1 of section 565.024, RSMo; murder in  
8 the second degree under section 565.021, RSMo, where the underlying felony is an  
9 intoxication-related traffic offense; assault in the second degree under subdivision (4) of  
10 subsection 1 of section 565.060, RSMo; or assault of a law enforcement officer in the second  
11 degree under subdivision (4) of subsection 1 of section 565.082, RSMo;

12 (3) An "intoxication-related traffic offense" is driving while intoxicated, driving with  
13 excessive blood alcohol content, involuntary manslaughter pursuant to subdivision (2) or (3) of  
14 subsection 1 of section 565.024, RSMo, murder in the second degree under section 565.021,  
15 RSMo, where the underlying felony is an intoxication-related traffic offense, assault in the second  
16 degree pursuant to subdivision (4) of subsection 1 of section 565.060, RSMo, assault of a law  
17 enforcement officer in the second degree pursuant to subdivision (4) of subsection 1 of section  
18 565.082, RSMo, or driving under the influence of alcohol or drugs in violation of state law or a  
19 county or municipal ordinance[, where the defendant was represented by or waived the right to an  
20 attorney in writing];

21 (4) A "persistent offender" is one of the following:

22 (a) A person who has pleaded guilty to or has been found guilty of two or more  
23 intoxication-related traffic offenses;

24 (b) A person who has pleaded guilty to or has been found guilty of involuntary  
25 manslaughter pursuant to subdivision (2) or (3) of subsection 1 of section 565.024, RSMo, assault  
26 in the second degree pursuant to subdivision (4) of subsection 1 of section 565.060, RSMo,  
27 assault of a law enforcement officer in the second degree pursuant to subdivision (4) of subsection  
28 1 of section 565.082, RSMo; and

29 (5) A "prior offender" is a person who has pleaded guilty to or has been found guilty of

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one intoxication-related traffic offense, where such prior offense occurred within five years of the occurrence of the intoxication-related traffic offense for which the person is charged.

2. Any person who pleads guilty to or is found guilty of a violation of section 577.010 or 577.012 who is alleged and proved to be a prior offender shall be guilty of a class A misdemeanor.

3. Any person who pleads guilty to or is found guilty of a violation of section 577.010 or 577.012 who is alleged and proved to be a persistent offender shall be guilty of a class D felony.

4. Any person who pleads guilty to or is found guilty of a violation of section 577.010 or section 577.012 who is alleged and proved to be an aggravated offender shall be guilty of a class C felony.

5. Any person who pleads guilty to or is found guilty of a violation of section 577.010 or section 577.012 who is alleged and proved to be a chronic offender shall be guilty of a class B felony.

6. No state, county, or municipal court shall suspend the imposition of sentence as to a prior offender, persistent offender, aggravated offender, or chronic offender under this section nor sentence such person to pay a fine in lieu of a term of imprisonment, section 557.011, RSMo, to the contrary notwithstanding. No prior offender shall be eligible for parole or probation until he or she has served a minimum of five days imprisonment, unless as a condition of such parole or probation such person performs at least thirty days of community service under the supervision of the court in those jurisdictions which have a recognized program for community service. No persistent offender shall be eligible for parole or probation until he or she has served a minimum of ten days imprisonment, unless as a condition of such parole or probation such person performs at least sixty days of community service under the supervision of the court. No aggravated offender shall be eligible for parole or probation until he or she has served a minimum of sixty days imprisonment. No chronic offender shall be eligible for parole or probation until he or she has served a minimum of two years imprisonment.

7. The state, county, or municipal court shall find the defendant to be a prior offender, persistent offender, aggravated offender, or chronic offender if:

(1) The indictment or information, original or amended, or the information in lieu of an

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1 indictment pleads all essential facts warranting a finding that the defendant is a prior offender or  
2 persistent offender; and

3 (2) Evidence is introduced that establishes sufficient facts pleaded to warrant a finding  
4 beyond a reasonable doubt the defendant is a prior offender, persistent offender, aggravated  
5 offender, or chronic offender; and

6 (3) The court makes findings of fact that warrant a finding beyond a reasonable doubt by  
7 the court that the defendant is a prior offender, persistent offender, aggravated offender, or chronic  
8 offender.

9 8. In a jury trial, the facts shall be pleaded, established and found prior to submission to  
10 the jury outside of its hearing.

11 9. In a trial without a jury or upon a plea of guilty, the court may defer the proof in  
12 findings of such facts to a later time, but prior to sentencing.

13 10. The defendant shall be accorded full rights of confrontation and cross-examination,  
14 with the opportunity to present evidence, at such hearings.

15 11. The defendant may waive proof of the facts alleged.

16 12. Nothing in this section shall prevent the use of presentence investigations or  
17 commitments.

18 13. At the sentencing hearing both the state, county, or municipality and the defendant  
19 shall be permitted to present additional information bearing on the issue of sentence.

20 14. The pleas or findings of guilty shall be prior to the date of commission of the present  
21 offense.

22 15. The court shall not instruct the jury as to the range of punishment or allow the jury,  
23 upon a finding of guilty, to assess and declare the punishment as part of its verdict in cases of  
24 prior offenders, persistent offenders, aggravated offenders, or chronic offenders.

25 16. Evidence of a prior [convictions] plea of guilty or finding of guilty in an intoxication-  
26 related traffic offense shall be heard and determined by the trial court out of the hearing of the jury  
27 prior to the submission of the case to the jury, and shall include but not be limited to evidence of  
28 convictions received by a search of the records of the Missouri uniform law enforcement system  
29 maintained by the Missouri state highway patrol. After hearing the evidence, the court shall enter

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1 its findings thereon. [A conviction of a violation of a municipal or county ordinance in a county  
2 or municipal court for driving while intoxicated or a conviction or] A plea of guilty or a finding of  
3 guilty followed by a fine, incarceration, a suspended imposition of sentence, suspended execution  
4 of sentence, probation or parole or any combination thereof in any intoxication-related traffic  
5 offense in a state, county, or municipal court, or any combination thereof, shall be treated as a  
6 prior [conviction] plea of guilty or finding of guilty for purposes of this section."; and

7  
8 Further amend said Substitute, Section B, Page 20, Line 2 by inserting immediately after said Line  
9 the following:

10 "Section C. Because immediate action is necessary to rectify a recent Supreme Court  
11 ruling which held that a defendant's prior guilty plea and suspended imposition of sentence in  
12 municipal court could not be used to enhance the punishment for the defendant's new  
13 intoxication-related traffic offense, section 577.023 of this act is deemed necessary for the  
14 immediate preservation of the public health, welfare, peace, and safety, and is hereby declared to  
15 be an emergency act within the meaning of the constitution, and section 577.023 of this act shall  
16 be in full force and effect upon its passage and approval."; and

17  
18 Further amend said bill by amending the title, enacting clause, and intersectional references  
19 accordingly.

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